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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF RELIGIOUS INTOLERANCE

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18

Addendum

Visit to Viet Nam

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Introduction

1. At his request and at the invitation of the Vietnamese Government, the Special Rapporteur visited Viet Nam from 19 to 28 October 1998 in the exercise of his mandate (resolution 1998/18 of the Commission on Human Rights). During his visit, the Special Rapporteur travelled to Hanoi (19-21 and 28 October), Ho Chi Minh City (24-27 October) and Tay-Ninh (27 October).

2. He had the opportunity to interview various officials (Deputy Minister for Foreign Affairs, Deputy Minister of Public Safety, Deputy Minister of Education and Training, Director of the Office of Religious Affairs, Ministry of Justice, Institute of Research into Religion) and representatives of the Buddhist Association of Viet Nam, the Catholic Church and the Administrative Council of the Cao Dai Holy See. Visits to places of worship and religious training establishments supplemented these meetings.

3. The Special Rapporteur regrets that he was not enabled to have talks with certain political leaders and with representatives of the Hoa Hao, Hindu, Confucianist and Taoist religious communities.

4. Some major and serious obstacles were encountered in connection with private interviews and movements. The Special Rapporteur was not enabled by the Vietnamese authorities to visit Danang and the hamlet of Nghia in Quang Ngai province; he was thus not able to meet the Patriarch of the Unified Buddhist Church of Viet Nam (EBUV), Thich Huyen Quang. He was also prevented - physically - by several individuals in plain clothes, claiming to represent the local authorities but refusing to identify themselves, from meeting Thich Quang Do, Thich Tue Sy and Thich Tri Sieu, members of the EBUV who had recently been released within the framework of an amnesty declared by the Vietnamese authorities. Information subsequently received on this incident will be given below. Various private meetings that had been arranged with members of the Cao Dai, Hoa Hao and Khmer Krom communities were unable to take place for reasons which require clarification and concerning which information subsequently received will be given below.

5. At his request, the Special Rapporteur was able to visit re-education camp No. Z30A, at Zuan Loc, Dong Nai province, to hold talks with three members of the EBUV, Thich Khong Than, Thich Nhat Ban and Thich Tien Minh. On his arrival, the Special Rapporteur was informed of the release, the previous day, of Thich Nhat Ban, within the framework of a second amnesty measure decided upon by the Vietnamese authorities. Information concerning his present situation, received after the visit, is given below. The private interview with Thich Khong Than and Thich Tien Minh was able to take place in accordance with United Nations rules only after long discussions on the spot with the camp commander; the interview had, however, to be cut short by the Special Rapporteur because the camp commander kept coming in and, finally, stayed in the room, thus destroying the private nature of the interview. Moreover, the camp commander said, after checking, that a member of the EBUV, Thich Hue Dang, and three Catholics, John Bosco Pham Minh Tri, Bernard Nguyen Viet Huan and Michael Nguyen Van Tinh, were not in his establishment, whereas several concordant and trustworthy sources of information had confirmed their presence there (see para. 76 below). The representatives of the Ministry of Foreign Affairs, although asked by the Special Rapporteur,

have not transmitted a list of the religious prisoners released, stating that the competent authorities had not supplied that information to the Ministry. The Special Rapporteur was able to organize a private interview, in Ho Chi Minh City, with a Protestant religious leader, the Reverend Paul Ai. It will therefore be realized that the circumstances and conditions of his visit have limited the amount of information that the Special Rapporteur has been able to collect and include in this report.

6. The Special Rapporteur wishes to add that, prior to his visit, he welcomed the positive amnesty measures since they formed part of a policy of dialogue and development that augured well for his visit. While thanking the Government of Viet Nam for its invitation, the Special Rapporteur wishes to recall the need to respect the rules and guarantees linked to his mandate, particularly freedom of movement and freedom to meet any person likely to supply him with relevant information, without any constraints or negative consequences.

7. The Special Rapporteur has focused his attention on legislation and policy in the field of tolerance and non-discrimination based on religion and belief and on the situation of the religious communities.

I. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Constitutional provisions and the Special Rapporteur's concerns

8. Freedom of religion or belief is guaranteed by article 70 of the Constitution of 15 April 1992 in the following terms:

> "The citizen has the right to freedom of belief, of religion, to embrace or not to embrace any denomination. Religions are equal before the law. The places reserved for the worship of the various beliefs and religions are protected by the law."

However, this same article 70 also provides as follows:

> "It is forbidden to violate freedom of belief, of religion, or to take advantage of it to act against the law or the policies of the State."

9. The Special Rapporteur has some queries about this provision, which establishes the principle of the priority of the policies of the State, a vague and extendable concept that could be potentially restrictive of religious freedom and its manifestations. This concern proves to be quite legitimate when, in connection with the policy of the State and its impact on freedom of religion, reference is made to article 4 of the Constitution, which states that "The Communist Party of Viet Nam ... following Marxism-Leninism and the thought of Ho Chi Minh, is the guiding force of the State and of society". These two articles, by their wording and their association, are likely to impede freedom of religion or even reduce it to very little indeed.

10. Lastly, there are concerns about the transposition of freedom of religion or belief, as guaranteed by the Constitution, into other legal provisions and, consequently, about the protection of this fundamental right in the Vietnamese legal system as a whole.

B. Other legal provisions and the Special Rapporteur's concerns

1. Decrees

11. There are two decrees that directly or indirectly relate to freedom of religion or belief, namely, Decree No. 69/HDBT of the Council of Ministers of 21 March 1991 on the regulation of religious activities and Government Decree No. CP/31 on administrative detention.

(a) Decree No. 69/HDBT

12. Articles 1 to 4 and 6 of this Decree guarantee freedom of religion and belief and the principle of non-discrimination based on religion or belief. The Special Rapporteur is, however, concerned about article 5, which stipulates some very vague reservations to freedom of religion such as "any activity using religion to sabotage national independence, oppose the State, sabotage the policy of uniting the whole people, undermine the healthy culture of our nation or prevent the faithful from carrying out their civic duties". Article 7 guarantees religious activities, but, like articles 70 and 4 of the Constitution, raises some questions about the priority given to "policy lines" and "ideological education". While article 8 provides that certain religious activities are not subject to government authorization, i.e. "ordinary activities within places of worship (such as prayer meetings, ceremonies, sermons and teaching catechism ...) in accordance with the religious customs of the region", it specifies that these activities, which are incidentally rather limited, must be programmed and registered every year.

13. All other religious activities, which are very diverse and numerous, are subjected to the authorization of the Provincial People's Committee or of a corresponding administrative body, or even of the Council of Ministers (arts. 9 et seq.), including diocesan priests' retreats and retreats for regular clergy from various orders among the Catholics, periods of meditation and fasting for Buddhist monks (art. 9), periodic conferences, national meetings of religious organizations (art. 10), repair or enlargement work changing the architecture of religious buildings (art. 11), charitable organizations, which have to operate within the guidelines of the competent State organs (art. 16) and the opening of religious schools (art. 17). Moreover, according to article 18, in the training schools for ecclesiastics and monks, the authorities reserve the right to verify the quality of the staff and monitor the teaching and ideological education.

14. Article 14 guarantees freedom to print religious books and to produce or import religious cultural works and objects used in worship, in accordance with the rules established by the State concerning printing and publishing and the production and importation of cultural works. The obligation to have recourse to State printing houses could have the potential result of censorship control.

15. Under articles 19 et seq., the ordination of ecclesiastics at all levels is subject to the approval of the authorities (the Provincial People's Committee or, in the case of the highest dignitaries such as cardinals and archbishops, the Council of Ministers). According to article 19, religious congregations (or similar forms of collective religious life) must request the permission and obtain the authorization of the Council of Ministers or of the organization appointed by the Council in order to become active.

16. Articles 23 et seq. establish, inter alia, that priests and religious personnel ordained and appointed by religious organizations abroad must be approved by the Council of Minsters and that individuals and religious organizations within the country must ask the authorities' permission before implementing guidelines coming from religious organizations abroad.

(b) Decree No. CP/31

17. Article 1 of this Decree defines administrative detention as an administrative measure to punish persons who break the law, namely, according to article 2, those who contravene national security, as defined in chapter 1 of the Penal Code.

18. This Decree makes it possible to force the persons concerned to live and work without leaving the place determined by the authorities and subjects them to the monitoring and direction of the people and of the local authorities. It thus gives authorization to place persons under police surveillance, report on their activities and put them into "administrative detention" without a court decision.

19. The Special Rapporteur has expressed his concern at the extraordinary powers conferred on the security services with regard to citizens, who can be deprived of their freedom for offences which give rise to serious reservations as to wording and content. Such offences could cover religious activities that are fully legitimate under international law (see subsect. 3 below on the Penal Code).

2. Directives

20. There are three directives that deserve particular attention: Directive No. 379/TTg of 23 July 1993 and Directive No. 500 HD/TGCP of 4 December 1993 on religious activities and the directive of 2 July 1998 on religion.

(a) Directive No. 379/TTg

21. This Directive provides that places of worship borrowed by the authorities must be returned to the churches or their owners when their use is no longer justified. It recalls that authorization to print religious books must be given in accordance with the Publications Act. It specifies that: "The censorship of religious productions must be carried out rapidly, in accordance with the formalities provided for by the law". As for the training of religious personnel, conditions are set forth, including the "importance of selecting persons who have fulfilled their civic duty perfectly". The Directive emphasizes, once again, the obligation of the various religions to

notify the authorities of the programme of their religious activities in order to have them approved and receive government assistance to carry them out. It also calls for the strengthening of the political bodies in the provinces and towns dependent on the central power and for the multiplication of senior staff capable of carrying out research and managing religious activities.

(b) Directive No. 500 HD/TGCP

22. This text repeats the provisions on places of worship contained in Directive No. 379/TTg. It specifies that the Ministry of Culture and Communications will designate the houses empowered to publish prayer books and religious works. Strengthening Directive No. 379/TTg with respect to the training and ordination of religious personnel, it sets the effective fulfilment of civic duties as the main criterion for the selection of candidates. It also states that "in an educational spirit and by means of persuasion, an attempt will be made to impede violations of the law and the political line by certain members of the clergy"; "those who exploit religion and commit such violations with perverse intention must be severely judged in accordance with the law"; and "those who slander or distort the truth will be severely punished".

(c) Directive of 2 July 1998

23. This directive recognizes religious belief as a spiritual need for part of the population. It stipulates that the religious policy of the Party and State is one of unwavering respect for the people's freedom of belief. It briefly describes the principles and policy lines of the Party and State regarding religion, which include freedom of religion and belief; the principle of non-discrimination based on religion or belief; the obligation for all religious activities to observe the Constitution and the laws, protect the interests of the Vietnamese socialist party and maintain national independence and sovereignty; and the role of the Party sections, local authorities, Patriotic Front of Viet Nam, associations and social and religious organizations in mobilizing the people and in the correct application of the religious policy of the Party and State. The directive announces the preparation of an order relating to religion, a project on the establishment of a printing house for the prayer books and cultural works of the various religions and the publication of a magazine for use in religious studies, guidance and continuing education in the field of religion.

3. Penal Code

24. The Penal Code, which was adopted on 27 June 1985, entered into force on 1 January 1986; it was amended on 28 December 1989, 12 August 1991 and 22 December 1992 and revised in 1997.

25. Article 1 states:

> "The purpose of the Penal Code is to protect the socialist system and to exercise control over collective socialism, to guarantee equal rights for all nationalities, to protect the citizens' lawful rights and

interests and to preserve the socialist legal order against any criminal acts, while educating the people to observe the laws in order to combat and prevent crime."

26. Chapter 1 on "national security" provides for heavy penalties (life prison terms, death penalty) for particularly vaguely worded offences (art. 73. Activities aimed at overturning the power of the people: any person carrying out activities or founding or participating in an organization with the intention of overturning the power of the people; art. 74. Espionage: provision of information and documents bearing no relation to State secrets to a foreign Power; art. 81. Attempt to undermine national unity: promoting division between religious believers and non-believers; art. 82. Propaganda against the socialist system) for wrongful acts under international law and for the legitimate exercise of rights and freedoms recognized by the Constitution of Viet Nam and international human rights standards.

27. In this connection, it should be recalled that in the report on its mission to Viet Nam (E/CN.4/1995/31/Add.4 of 18 January 1995), the Working Group on Arbitrary Detention stated that "... the characterizations of offences as crimes against national security, as defined in article 73 of the Penal Code, draw no distinction on the grounds of the use or non-use of violence or of incitement or non-incitement to violence [...] the present wording of article 73 is so vague that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate right to freedom of opinion or expression" (para. 58).

28. Other offences characterized by the Penal Code show the same deficiencies:

(a) Article 205 (a). "Misuse of democratic rights aimed at undermining the interests of the State, social organizations or citizens: misuse of freedom of speech, the press and religion or wrongful use of the rights of assembly, association or other democratic rights"; it should be noted that the concept of misuse cannot always be objectively assessed;

(b) Article 199. "Exercise of superstitious practices: any person who practises divination, acts as a medium or pursues other superstitious practices"; it should be noted there is no attempt whatsoever to define the concept of superstition;

(c) Article 198. "Disturbing the peace: anyone who disturbs the peace in a public place"; no information is provided on this vague and extendable concept;

(d) Article 215. "Violation of the rules governing publication and distribution of books, newspapers and other printed material".

It seems, however, that these provisions are used as major obstacles to the exercise of religious activities (see chap. III - Situation of the religious communities in the field of religion and belief).

29. When told of the Special Rapporteur's concerns about constitutional and other legal and statutory provisions and provisions of international law (including the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief), the Deputy Director of the Ministry of Justice stated that the Vietnamese legal system gave priority to international law whenever domestic provisions were contrary to international standards or were lacking.

30. Replying to a question by the Special Rapporteur on the compatibility between international standards guaranteeing rights and Vietnamese legal machinery, which established the principle of authorization in respect of those rights, the representative of the Ministry of Justice said that Viet Nam was studying the question whether to retain the principle of authorization or to establish the principle of a simple declaration and was conducting the appropriate reviews aimed at bringing domestic legislation into line with international legislation if necessary. He noted that the National Assembly was studying the question whether to prepare an order relating to religion and that United Nations technical assistance would be appreciated.

31. In reply to the Special Rapporteur's questions about the use in Vietnamese legislation of vague and extendable concepts granting excessive discretionary powers to law enforcement officials, the Deputy Minister of Public Safety explained that the legislation clearly provided for freedom of religion and belief and stressed that the law had to be respected by all, including the police. In particular, he considered that the provisions of the Penal Code, especially article 73, were sufficiently clear.

32. The representatives of the Institute of Research into Religion said that the Constitution clearly guaranteed freedom of religion and was consistent with international law, although they did say that some articles might be amended.

II. POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Non-governmental information

33. According to information transmitted to the Special Rapporteur by non-governmental organizations before and during his visit, Viet Nam's religious policy has undergone changes since 1990. The radical changes in the world order resulting from the end of the cold war and the fall of the Berlin Wall, together with globalization, have induced the authorities to become more open in an effort to maintain their hold on power. This open attitude has primarily been found in the economic area, but has also had repercussions on religious policy in Viet Nam. From the standpoint of domestic law, the Communist Party has recognized the "utilitarian value" of religion and has decided to incorporate religion into State policy. The Seventh Party Congress stated that "Most people have a spiritual need for religions and beliefs; this need will persist for a long time to come"; and that "there are a number of aspects to religious teachings which are particularly useful for building a new society".

34. The new official policy on religion is aimed not at eliminating religion, but at introducing tolerance, mainly in the form of greater freedom of worship, but also at placing limits on the authorities' power to interfere in religious affairs.

35. The following are the main instruments used to exercise control over religions:

(a) Legislation (primarily the Code of Criminal Procedure and Decree No. CP/31);

(b) Administrative machinery for managing religious affairs:

(i) A State organ, the Office of Religious Affairs, with headquarters in Hanoi and local branch offices;

(ii) The Department for the Mobilization of the Masses, which advises the Communist Party on the strategies and policies to be used for providing the people with ideological support;

(iii) The Party Front, consisting of the Communist Party's general machinery for exercising control over intellectuals and organizations;

(iv) The Ministry of the Interior, which cooperates closely with the above-mentioned bodies and is responsible for surveillance and infiltration of places of worship and religious organizations, through the security services.

(c) The development of State religious structures with the aim of making religions a support for policy;

(d) A three-tiered monitoring system:

(i) Sector policeman: officer responsible for exercising control over the people, empowered both to make arrests in the absence of a judge, in particular on grounds of illegal association (whenever three persons from another sector are found together in the same dwelling) and to issue and revoke residence permits;

(ii) Residence permit: administrative document containing essential information (including religious and political data) describing the citizen, drawn up by the sector policeman and indispensable for administrative formalities, for access to employment, school, health care, etc. In practice, sector policemen are said to have the power to issue and revoke this document and thus to have excessive power over individuals;

(iii) The curriculum vitae: a document containing information on "past activities and contributions to the Revolution" and political opinions "before and after the Revolution" of the relatives and acquaintances of any member of the clergy who wishes to be ordained must be drawn up and sent to the Office of Religious Affairs.

36. Thus, Vietnamese policy on religious matters generally reflects, on the one hand, a gradual improvement in religious freedom, but in very limited areas subject to restrictions and, on the other, the maintenance of restrictions and checks by authorities anxious to prevent the establishment of organizations capable of questioning their authority and influence. The extent to which this policy is applied varies according to the willingness or reluctance of the local authorities to apply it and according to the religious community involved (see chap. III - Situation of the religious communities).

37. The amnesties of 2 September 1998 and 23 to 25 October 1998, which led to the release of 5,219 and 2,630 prisoners, respectively, including members of the EBUV and Catholic clergy, were considered to be signs of progress. Although asked to do so by the Special Rapporteur, the representatives of the Ministry of Foreign Affairs did not transmit the list of religious prisoners released, stating that the competent authorities had not provided the Ministry with that information.

B. Information from the Vietnamese authorities

38. According to the Vietnamese authorities, freedom of religion and belief is guaranteed and respected in Viet Nam. It is possible to practise religious activities, provided that they are in conformity with the law. The administration is responsible not only for ensuring that religious activities are in conformity with the legislation, but also for ensuring that religions and beliefs are respected. The authorities explained that they respected religion (defined by the Office of Religious Affairs as mysteries unexplained by science), but combated the superstitions rejected by modern science and by religious leaders. They also stressed that arrests of clergy were not based on religious grounds, but, on the contrary, on the violation of the law committed by the individuals concerned.

39. The Deputy Minister of Public Safety explained that his mandate was to guarantee citizens safe and peaceful lives, including safety for their religious activities, to combat reactionary forces and to re-educate the guilty to help them become good citizens. He emphasized that the police guaranteed the freedom of citizens and dismissed any information attesting to police domination over the people as false propaganda. He stated that clergy were free to move about to the extent authorized by the local authorities. In reply to the Special Rapporteur's questions about factors undermining freedom of religion, he said that freedom of religion was guaranteed.

40. The Institute of Research into Religion stated that the current trend in Viet Nam was towards the expansion of religions.

III. SITUATION OF THE RELIGIOUS COMMUNITIES

41. The Special Rapporteur has collected information on the main religious communities in Viet Nam, namely, Buddhism, Catholicism, Protestantism, Islam, Caodaism and the Hoa Hao community. The Office of Religious Affairs has declared these religions the six official religions of Viet Nam and provided the following data for 1996:

I. Religious followers	15 203 132
including:	
Buddhists	7 378 417
Catholics	4 952 605
Protestants	403 238
Muslims	93 174
Cao Dai	1 122 827
Hoa Hao	1 252 906
II. Clergy	49 778
including:	
Buddhist monks, nuns	27 884
Catholic clergy	14 492
Bishops	33
Priests	2 200
Male and female clergy	10 228
Seminarians	548
Protestant clergy	549
Pastors	157
Assistant pastors	392
Cao Dai	5 608
Islam	734
Hoa Hao	61
III. Places of worship	
Buddhists	14 012
Catholics	6 003
Protestants	437
Muslims	71
Cao Dai	896
Hoa Hao	115

42. According to non-governmental sources, however, Buddhism (introduced in Viet Nam 2000 years ago and primarily Greater Vehicle Buddhism, i.e. oriented towards action in society) accounts for 80 per cent of the population*, while

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* The 1998 Human Development Report estimates the population of Viet Nam at 73.8 million in 1995.

Catholicism (introduced by Portuguese Dominican missionaries in 1615) has nearly 6 million followers; Cao Daism (founded in Tay Ninh in 1926) has 3 million followers and the Hoa Hao community (founded in 1939) 2 million; Protestants have been in the country since 1911, when the first American missionaries arrived, and number 700,000 and Islam is represented by 50,000 followers.

43. Official (for 1996) and unofficial (for 1998) estimates are therefore widely divergent, but Buddhism is clearly the majority religion, followed by the Catholic, Cao Dai, Hoa Hao, Protestant and Muslim minorities.

A. Buddhist community

44. The Special Rapporteur has studied the situation of Buddhists, in particular the United Buddhist Church of Viet Nam (EBUV) and the Khmers Krom community (descendants of the Khmers of the Angkor civilization, of Indian origin). He assembled information collected from the authorities, the Buddhist Association of Viet Nam, the prisoners of a re-education camp and other non-governmental sources.

45. As indicated in the introduction to his report, the Special Rapporteur was not able to meet the patriarch of the EBUV, Thich Huyen Quang, who has been detained without trial since 1982. He was also prevented from meeting, in Ho Chi Minh City, three members of the EBUV clergy recently released in the context of an amnesty, Thich Quang Do, Thich Tue Sy and Thich Tri Sieu. Despite the explanations given of the official status of the United Nations Special Rapporteur and the purpose of his visit, several individuals in plain clothes, claiming to represent the local authorities and stating that they had been informed of the United Nations representative's mission, refused access to the three clergymen. During his visit, the Special Rapporteur was informed by several non-governmental sources that the individuals who physically barred his access to the EBUV clergy were members of the security services; the latter had initially attempted to force the keeper of the pagoda where the private meeting was to take place to bar the Special Rapporteur's access to the pagoda, but he had refused and threatened to immolate himself.

46. Unofficial information provided after the mission stated that EBUV [illegible]nze Thich Nhat Ban, whom the Special Rapporteur had requested to meet in [illegible]A re-education camp and who had been released in the context of an amnesty [illegible]n the eve of the Special Rapporteur's visit, had been placed under house arrest; Thich Nhat Ban stated that he had left "a small prison only to enter a large one".

47. The Special Rapporteur went to the place where a private meeting was to take place with representatives of the Khmers Krom, but the people he interviewed were unable to communicate any information whatsoever. After the visit, non-governmental sources indicated that the Khmers Krom representatives' failure to make statements had apparently been due to pressure from the security services.

1. Information from the authorities

48. Apart from the information which is given above on government policy in the religious field and is thus relevant to the Buddhists, the Office of Religious Affairs gave an historical survey of Buddhism in Viet Nam and, with reference to the EBUV, explained that a minority within that organization had in 1981 refused unification within the Buddhist Association of Viet Nam. The representative of the Office of Religious Affairs stated that the refusal was of no interest to the Government and did not constitute a problem. He added that some members of the EBUV had been arrested and convicted for failure to respect the law.

49. The Deputy Minister of Public Safety refuted the allegations concerning the presence in the pagodas of false bonzes belonging to the security services, while specifying that all citizens must be supervised. The Institute of Research into Religion stated that it did not have sufficient documentation to establish the legality or otherwise of EBUV activities.

50. In reply to a question asked by the Special Rapporteur concerning the demonstration organized by bonzes at Hue on 24 May 1993 for religious freedom and human rights, the Vice-Chairman of the Province of Hue said that religion must not be taken advantage of to perpetrate evil deeds. He said that such behaviour was condemned by the Buddhist religion. He concluded that the case was over and done with and that those responsible had since been released from prison. The Hue Director of Religious Affairs explained that, if the demonstration had genuinely been of a religious nature, the whole population would have risen up.

51. The commander of re-education camp No. Z30A, at Xuan Loc in the province of Dong Nai, informed the Special Rapporteur of the release on 24 October 1998, in the context of an amnesty, of Thich Nhat Ban, an EBUV bonze. He stated that Thich Hue Dang, an EBUV bonze, was not in the camp.

52. With respect to the Khmers Krom, the representative of the Office of Religious Affairs stated that they were members of the Buddhist Association of Viet Nam and that they accounted for more than 10,000 bonzes out of a total of 28,000, despite their small population. The Deputy Minister of Public Safety took the view that the Khmers Krom enjoyed freedom of religion.

2. Information from the Buddhist Association of Viet Nam

53. The representatives of the Buddhist Association of Viet Nam stated that Buddhists enjoyed freedom of religion in a period auspicious for religious practice, the building and renovation of places of worship, religious publications and the training of monks in Buddhist training institutes in Viet Nam or in study courses abroad. It was mentioned that the movements of monks were subject to the authorization of the Buddhist Association of Viet Nam.

54. The representative in Hanoi said that State policy was characterized by non-interference in the internal affairs of the Buddhist Association of Viet Nam and by assistance to religions and the creation of favourable conditions.

55. According to the representative in Ho Chi Minh City, the teaching of Buddhism was independent, whereas the list of candidate students had to be submitted to the authorities, which always gave their approval. In reply to the question by the Special Rapporteur concerning the presence of false bonzes in the pagodas, it was stated to be an epiphenomenon.

56. The representatives in Hue and Ho Chi Minh City said that Buddhism could contribute to the development of Viet Nam and, reciprocally, achieve its own development. They hoped that financial circumstances would improve to enable Buddhism to make progress through places of worship and training institutes.

57. On the subject of the EBUV, the representatives of the Buddhist Association of Viet Nam explained that the leaders of that organization had refused to become united within the Association because of their own understanding of the development of Buddhism and of State-controlled institutions.

58. Representatives in Hanoi and Ho Chi Minh City stated that the arrests of the EBUV leaders were more particularly linked to their non-acceptance of the Buddhist Association of Viet Nam and of the political regime, as well as their activities outside the sole recognized Buddhist association.

59. One representative said that the leaders of the Buddhist Association of Viet Nam could, on the one hand, ask the Government to amnesty the arrested monks and, on the other, approach the authorities in cases of arbitrary arrest. A representative in Hue said that the Buddhist Association of Viet Nam had no views on these arrests and sentences, which were a matter for the State.

60. One representative in Hue explained that many EBUV members had rejoined the Buddhist Association of Viet Nam and that, however strong it might have been in the past, the EBUV no longer represented more than a minority of Buddhists. He added that the EBUV nevertheless still claimed to represent the majority and accused the Buddhist Association of Viet Nam of being a State-controlled organization. In connection with the Special Rapporteur's information concerning the demonstration by 40,000 bonzes in Hue on 24 March 1993 and the arrests of Thich Khong Than, Thich Nhat Ban and Thich Hai Chanh, the representative in Hue queried the number of demonstrators, the figure of 40,000 bonzes being an unrealistic one, in comparison with a population of Hue estimated at 100,000, and one which must have included passers-by. He added that the demonstration had been the act of young bonzes who had caused some disorder in respect of the Buddhist Association of Viet Nam and emphasized that the cases of imprisonment were based on charges of breaches of the peace.

61. On the subject of the Khmers Krom and the allegation of their marginalization, including religious marginalization, the representative of the Buddhist Association of Viet Nam in Hanoi said that, while minor problems existed, their situation was generally satisfactory. It was stated that the Buddhist Association of Viet Nam was supporting the Khmers Krom, particularly by sending bonzes on study courses abroad. The representative at Hue said that the Khmers Krom were represented on the Central Committee of the Buddhist Association of Viet Nam.

3. Information received from prisoners in the re-education camp

62. The Special Rapporteur interviewed two members of the EBUV, Thich Khong Than and Thich Thien Minh, in re-education camp No. Z30A in Xuan Loc in the province of Dong Nai, in the conditions described in paragraph 5 above. Thich Khong Than said that he had been imprisoned for his religious beliefs and because he had transmitted a document to the Working Group on Arbitrary Detention during its visit to Viet Nam in 1994. The Special Rapporteur was able to establish that, in fact, it was only an open letter by Thich Quang Do addressed to the Secretary-General of the Communist Party. Thich Tien Minh said that he had been detained because of his past opposition to the arbitrary use of a pagoda by the authorities as an office and because of his denunciation of violations of human rights in Viet Nam.

63. The two prisoners confirmed that religious prisoners were not separated from common criminals, that all religious activity was forbidden, that they were not permitted to address one another by their religious names and that they were obliged to work, since that requirement was applied to bonzes also. They deplored the bad prison conditions, particularly the fact that the prisoners were held in solitary confinement, chained and forbidden to use pen and paper, that there was a danger of AIDS as a result of the common use of a single razor blade, that work was imposed on elderly persons (over 70 years of age) and that sick people were being held in prison, some of whose lives were in danger. They demanded the independence of the EBUV.

64. Thich Thien Minh said he hoped that the Commission on Human Rights would request the unconditional release of all religious and political prisoners, the restitution of religious property and respect for human rights and for a plurality of parties, particularly by the repeal of article 4 of the Constitution on the supremacy of the Communist Party, so that everyone could participate in the development of Viet Nam.

4. Non-governmental information

65. As regards the general situation of the Buddhists, the non-governmental information given in chapter II on State policy is still valid.

66. With respect more particularly to the EBUV, many non-governmental sources, including the EBUV itself, explained that the organization had refused to become part of the Buddhist Association of Viet Nam, which was seen as a State-controlled association, in order to prevent any attempt by the authorities to neutralize Buddhism. The establishment of the Buddhist Association of Viet Nam had, in fact, outlawed the EBUV. The Buddhist dispute had become more acute at the time of the funeral of Thich Don Hau, the Patriarch of the EBUV, in 1992, and the succession of Thich Huyen Quang (held without trial since 1982). According to the same sources, the authorities had suppressed the demonstration of the bonzes in Hue in May 1993 (particularly by arresting Thich Tri Tuu, Thich Hai Tang, Thich Hai Tinh and Thich Hai Chanh) and the EBUV mission of assistance to the victims of the Mekong Delta floods (arrests of Thich Khong Than, Thich Nhat Ban, Thich Tri Luc, Nhat Thuong and Dóng Ngoc and, in January 1995, of Thich Quang Do, Secretary-General of the EBUV) and had maintained pressure on the EBUV Buddhists (harassment,

surveillance, confiscation of goods, etc.). The Buddhist Youth Movement, an essential part of the Buddhist educational network, had been broken up and replaced by a "Youth Union section" subsidiary to the Communist Party.

67. One non-governmental source, while confirming the information given above on the general situation of the EBUV, took the view that the EBUV was campaigning for the development of Buddhist fundamentalism and for its establishment as the State religion. This source added that the tendency was a minority one, but that it was supported from abroad. As for the Hue demonstration, he said that it had not received the support of the people and that it had ultimately been manipulated by Communist officials so as to demonstrate to the international community that they had no choice but to intervene.

68. According to non-governmental sources, including themselves, the Khmers Krom, who are for the most part located in the Mekong Delta region, want their ethno-religious identity to be respected. To that end, while acknowledging the recent improvements in the field of religious practice and places of worship, the Khmers Krom are opposed to interference by the authorities in the internal religious affairs of the community. Several changes were requested, including:

(a) The possibility of establishing a Khmers Krom Buddhist Association independent of the Buddhist Association of Viet Nam, which is described as a tool of the authorities;

(b) Complete freedom of worship, particularly by suspension of the obligation imposed on all the Khmers Krom temples in the province of Soc Trang to celebrate the Kathinatean festival on the same day, contrary to Buddhist tradition, which allows that festival to be held in the month of October at a date selected by the faithful;

(c) The return of the Khmers Krom temples and religious property confiscated since 1975; and

(d) The possibility for former Khmers Krom monks who had been imprisoned to be reinstated in their temples and regain their ecclesiastical status.

B. Catholic community

69. Information obtained from the authorities, from the Catholic Church itself and from non-governmental sources is given below.

1. Information from the authorities

70. As regards the situation of the Catholic community, the information obtained from the authorities on State policy in respect of religion and contained in chapter II is still valid.

71. In reply to a question by the Special Rapporteur on the training of Catholic clergy, the representative of the Office of Religious Affairs said that the Catholic Church had six seminaries for the training of priests. He stated that every candidate must be a "good citizen".

2. Information from the Catholic Church

72. The representatives of the Catholic Church consider that the situation of their community has been characterized, since the 1990 opening, by a gradual evolution made up of both advances and the retention of limitations (as compared with a previous period characterized by a form of persecution and discrimination because the Catholic Church was perceived as being an instrument of Westernization and colonialism). A strong and developing religious practice, particularly among young people, has been observed. This development has been interpreted as resulting both from conditions more favourable to religion and from an inward search for faith to compensate for a very restricted outside social life.

73. While appreciating the scope of this evolution, the Catholic leaders recalled the persistence of limitations ensuring interference by the authorities in internal religious affairs and affecting the religious situation of Catholics, namely:

(a) The Catholic Church's programme of activities must be approved by the authorities. Any additional activity that has not been scheduled must form the subject of a declaration to the authorities in the case of a Mass or of their agreement in the case of a meeting of young people;

(b) The number of priests is still inadequate because of training difficulties (existence of a numerus clausus and a delay of two years for the authorities to approve the candidates), the need for approval by the authorities of the appointment of priests and the lack of seminaries (application to open two seminaries in Thai Binh and Xuan Loc to relieve those in Hanoi and Ho Chi Minh City and request for the restitution of the Dalat University Seminary, which is the property of the Vatican);

(c) The appointment of bishops and archbishops by the Vatican implies the approval of the authorities. The situation has recently eased as a result of negotiations between Hanoi and the Holy See (consultation of the Vietnamese bishops by the Vatican to prepare a list of candidates from which Hanoi makes its selection);

(d) Despite a certain amount of development, there are still political and administrative obstacles to the appointment and reassignment of priests;

(e) The movement of priests from one diocese to another for religious purposes must be authorized by the authorities;

(f) The building and restoration of places of worship must be approved by the authorities. Requests for the restitution of Church property needed for the effective carrying out of religious activities must be made to the authorities;

(g) The number of bibles is adequate, but the Catholic Church requests the establishment of a Catholic publishing house separate from the official establishments so as to guarantee freedom to publish religious books and prevent any censorship;

(h) The Catholic Church would like to be able to participate in educational activities and to establish social and hospital services; and

(i) A visit by the Pope is ardently desired.

74. It emerged from the conversations with the representatives of the Catholic Church that the improvements noted in the religious field were often regarded as a sort of laissez-faire approved by the authorities which does not, however, represent any assurance or guarantee of a policy and legislation favourable to freedom of religion and its manifestations. It was thus a matter more of implicit connivance and favours granted than of indisputable rights. We may, incidentally, note the establishment in 1983 of a Vietnamese Catholic Solidarity Committee, which is said to be dependent on the authorities, is allegedly far from representative, however, and does not constitute a real problem for the Catholic Church.

75. With regard to religious prisoners, representatives of the Catholic Church said that three Catholics were detained in camp Z30A in Xuan Loc, and one Catholic in camp 5, group 25, in Thieu Yen, Thanh Hoa. During his visit, the Special Rapporteur was also informed by Catholic officials that two priests detained in camp Z30A, Nguyen Viet Hien and Nguyen Chan Dat, had been released on 24 October 1998.

3. Other non-governmental information

76. Safe, reliable non-governmental sources have confirmed the presence of three Catholic monks in camp Z30A: John Bosco Pham Minh Tri, Bernard Nguyen Viet Huan and Michael Nguyen Van Tinh; John Bosco Pham Minh Tri is reported to be suffering from mental health problems.

C. Cao Dai community

77. The information below was obtained from the authorities, the Management Committee of the Cao Dai Holy See and various non-governmental sources.

78. It will be recalled that the Special Rapporteur was unable to meet the Cao Dai clergy from the Council of Priests (dissolved in 1979; see below, para. 83) who wished to submit a file of grievances. After the Special Rapporteur's mission, their representatives gave the following information: the priest Le Quang Tan (Ho Chi Minh City) and Archbishop Thai The Thanh (in Tay Ninh) were reported to have been prevented by the police from meeting the Special Rapporteur, while Mr. Pham Cong Hien and Ms. Le Kim Bien (Kien Giang province) were reported to have been arrested.

1. Information from the authorities

79. With regard to the situation of the Cao Dai community, the information on State policy in respect of religion, obtained from the authorities and contained in chapter II, is still valid.

2. Information from the Management Committee of the Cao Dai Holy See

80. The Special Rapporteur was received at the Cao Dai Holy See in Tay Ninh by some 30 Cao Dai officials, including the most senior religious official. However, only one of them spoke, introducing himself as a member of the Management Committee of the Holy See and representing the whole group; no one else spoke, not even the most senior religious official. A number of people took notes on the meeting, which was also taped and filmed. When the Special Rapporteur attempted to initiate a discussion with other persons, the Committee member representing the group stated that there was no more to be said and politely ended the meeting.

81. The representative considered the Cao Dai community's situation to be satisfactory and said that it was characterized by complete freedom of religion and an expansion of Cao Daism, as shown in particular by the building and renovation of places of worship and by religious events involving thousands of believers.

82. In reply to a question from the Special Rapporteur concerning complaints by Cao Daists about interference from the authorities in Cao Daism, the use of the Cao Dai Association by the authorities and the arrest of religious officials (see para. 83), the Management Committee representative said that the Cao Dai Association represented 99 per cent of believers and that only an insignificant handful of believers was not content. He added that some Cao Dais had violated the principles of Cao Daism, which had led to "their removal from the religion". It was also pointed out that some Cao Dais had been condemned for reasons unconnected with religious activities. Lastly, the Management Committee representative stated that the Holy See alone had the power to authorize the practice of Cao Daism and that its officials had been chosen by the Cao Dai faithful.

3. Non-governmental information

83. A number of non-governmental sources, including Cao Dai sources, said the authorities had followed a policy of interference that was extremely harmful to the Cao Dai religion. The main stages of this policy are summarized below in order to make it easier to understand the current situation:

(a) 1975-1979: Decree No. 297, of 11 November 1977, placing the Cao Dai Church under the control of the Patriotic Front; confiscation of all religious properties; prior authorization by the authorities of any religious activity; arrest of clergy; Tay Ninh Patriotic Front judgement of 20 September 1978 condemning any Cao Daist religious activities deemed to be counter-revolutionary.

(b) 1979-1996: Decree No. 01/HTDL of 1 March 1979 signed - on the order of, and under pressure from, the Tay Ninh provincial government - by the Council of Priests, terminating its own existence and announcing the dissolution of all the religious bodies and the establishment of a Management Committee with full powers. The statutes of Cao Daism, drawn up in 1926, make

no provision for this Committee, which is completely controlled by the authorities; it is therefore a flagrant violation of the statutes. This period was also marked by the arrest, detention and house arrest of Cao Daist clergy.

(c) 1996 to date: implementation plan No. 01-HK/TV of 27 May 1996, of the Tay Ninh Communist Party Executive Committee, aiming at the dismantling of the Tay Ninh Cao Dai Church between June and September 1996, its replacement by a State Cao Dai Church and the exclusion of clergy described as "bad and extremist elements". Issue on 5 May 1997 of a new charter conflicting with the Constitutional Charter of Cao Daism. Two distinct groups are now associated with Cao Daism: a Management Committee, comprising a few church officials controlled by the authorities, and a majority of independent church officials opposed to the Committee.

The non-governmental sources therefore denounce a policy that denies freedom of religion through interference in the internal affairs of the Cao Dai religion.

D. Hoa Hao community

84. The Special Rapporteur was not able to meet representatives of the Hoa Hao community either officially or in private. After his mission, non-governmental sources provided information alleging that pressure had been placed on the representatives it had been planned to meet in private by the security services, which had made it impossible to hold the meeting.

1. Information from the authorities

85. With regard to the situation of the Hoa Hao community, the information on State policy in respect of religion, obtained from the authorities and contained in chapter II, is still valid. The representative of the Office of Religious Affairs stated that the Hoa Hao religion was one of the six official religions. A representative of the Ministry of Foreign Affairs said, however, that there was no Hoa Hao organization.

2. Non-governmental information

86. According to non-governmental sources, including Hoa Hao sources, the authorities have stood by their 1975 decision to close all the central, regional and local administrative offices of the Hoa Hao church (3,589 in all) and all places of worship and religious, social and cultural establishments (a total of more than 5,000, including, in An Giang province, a university, a hospital and a centre for the propagation of the faith). Also prohibited are the dissemination of Hoa Hao sacred scriptures and the public celebration of Hoa Hao religious festivals, including the holy day commemorating the founding of the Hoa Hao church. According to these sources, Hoa Hao believers are subject to strict police surveillance and religious officials, who were arbitrarily arrested in the past, continue to be detained.

87. Since 1993, Mr. Le Quang Lien, Chairman of the former Central Committee of the Hoa Hao Buddhist Congregation, has submitted to the authorities certain complaints regarding, in particular, the restoration of the Congregation and the denunciation of official works blaspheming the founder of the Hoa Hao religion.

E. Protestant community

88. The following information was obtained from the authorities and from non-governmental sources, including the Reverend Paul Ai at a private meeting in Ho Chi Minh City.

1. Information from the authorities

89. The information obtained from the authorities about the Protestant community, and contained in chapter II on State policy in respect of religion, is still valid.

90. In reply to a question from the Special Rapporteur about allegations that the religious rights of Protestants, in particular those belonging to ethnic minorities, were not being respected, the Deputy Minister for Public Security said that, in the past, American allegations concerning the destruction of places of worship had been shown to be false; he confirmed that the current situation was one of respect for places of worship, including those of ethnic minorities.

2. Non-governmental information

91. While several non-governmental sources admit that there have been some gradual improvements in the religious sphere, to the benefit particularly of Protestants, or at least certain Protestant congregations, including the possibility of printing bibles and the building of places of worship, major difficulties still exist.

92. The authorities refuse legal recognition to Protestant congregations other than the Evangelical Church of Viet Nam (based in Hanoi and comprising some 20 small congregations), which is described as a religious organization under State control. In order to avoid being "infiltrated" by the authorities, the majority of congregations have resisted government pressure to establish a single organization for all Protestant congregations; such congregations are therefore either tolerated, i.e. given de facto recognition, or clandestine.

93. The majority of Protestant organizations conduct their religious activities without legal recognition, in places of worship or private homes, or even in the forest in the case of ethnic minorities in mountainous areas. These congregations are at the mercy of the goodwill of the authorities, who may either pursue a form of laissez-faire policy or react to activities that are classed as illegal.

94. The authorities may take any of the following actions in response to illegal activities:

(a) Suspension of religious services by the security service, financial penalties for religious officials and confiscation of all religious literature;

(b) Confiscation or even destruction of places of worship (for example, in December 1997, Tanh My church in Lam Dong province, which had been confiscated after 1975, then used as a public library and later abandoned, was bulldozed, despite the submission by a Protestant organization of a request for its return in accordance with Directive No. 500 HD/TGCP);

(c) Harassment and arrest of pastors. For example, pastors Lo Van Hoa, Lo Ven Hen and Nguyen Van Vuong were arrested on 14 March 1996 and 13 April 1996 in the Dien-Bien district of Lai-Chau province and sentenced in September 1996 to 36 months' imprisonment;

(d) The situation appears even more difficult for ethnic minorities in the north of Viet Nam - the Hmong, Hre, Jeh and Jera - because of a sharp rise in conversions to Protestantism (according to certain information, 120,000 Hmong have turned to Protestantism during the last eight years);

(e) Arrest and detention of pastors and faithful, financial penalties, confiscation of religious books, destruction of places of worship and other measures aimed at forcing Protestant believers among these minorities to renounce their faith and desist from all religious activity (for example, according to a Hmong petition of 3 October 1997, in Lo Giang province, 300 Hmong Protestants from the town of Bach Son, the hamlet of Thuong Tan and the district of Bac were arrested and ill-treated simply because of their religion);

(f) Protestant religious properties (places of worship, seminaries and educational and health establishments) confiscated after 1975 have not been returned despite requests from Protestant congregations. For example, the Institute of Theological and Evangelical Studies at Nha Trang in Khanh Hoa province, which was seized by the Khan Hoa Peoples' Committee in 1978, was rented out to Australian entrepreneurs for the construction of a hotel complex, despite several requests for its return submitted by the Protestant Church;

(g) Since 1975, the authorities have authorized only one class of 13 students to receive Protestant religious training. No Protestant theological training establishment is authorized, thus forcing religious congregations to organize private training for pastors. The ordination of pastors, which the authorities want to supervise, is rarely authorized.

F. Muslim community

95. The information below was obtained from the authorities and from the Muslim Association of Viet Nam.

1. Information from the authorities

96. The information obtained from the authorities relating to the situation of the Muslim community, and contained in chapter II, is still valid.

2. Information from the Muslim Association of Viet Nam

97. The representatives of the Muslim Association of Viet Nam stated that their community, which was centred basically in the south of the country and made up of ethnic Vietnamese and others originally from Malaysia, India and Indonesia, enjoyed freedom of religion. They emphasized that they were able to conduct, freely and fully, their religious activities, including prayer, religious festivals such as Ramadan, religious teaching including study abroad, the printing of religious works including the Koran, the movement of clergy, the pilgrimage to Makkah and correspondence between clergy, including foreign Muslim organizations. They said that the Muslim Association of Viet Nam, which had been banned after 1975, had been authorized once more in 1992 and was the only Muslim association in Viet Nam. They were satisfied with the number of places of worship and of imams.

98. Even so, they regretted the lack of financial resources needed to develop Islam in Viet Nam. While they appreciated the material and financial donations received from abroad (Saudi Arabia, Kuwait, Indonesia, Malaysia), they would have liked greater financial assistance.

IV. CONCLUSIONS AND RECOMMENDATIONS

99. The Special Rapporteur's analysis of the situation in Viet Nam focused on legislation and State policies in the field of tolerance and non-discrimination based on religion or belief and, accordingly, on the situation of the religious communities.

100. The 1992 Constitution, which reflects Viet Nam's new policy lines in the field of fundamental freedoms, guarantees a number of fundamental rights, including the right to freedom of religion or belief. In conformity with international law, article 70 of the Constitution protects freedom to believe or not to believe. The second part of the article, however, addresses the question of limitations on freedom of belief, i.e. respect for the law and the policies of the State (see para. 8 above).

101. As a preliminary observation, the Special Rapporteur notes that, while it is true that international law provides for limitations on freedom to practise a religion or belief (as opposed to freedom of religion or belief per se), article 18 of the International Covenant on Civil and Political Rights and article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, like the Vietnamese Constitution, stipulate that all restrictions must be established by law.

102. However, whereas the two international instruments list the restrictions necessary for public safety, order, health or morals, or the fundamental rights and freedoms of others, article 70 of the Constitution also refers to "the policies of the State". The concept of policy of the State appears, at first glance, to be quite vague and extendable: it may of course include State policies designed to guarantee public safety, order, health or morals, or the fundamental rights and freedoms of others, but it can also go further, to include restrictions not provided for under international law.

103. Even greater concern is raised by article 4 of the Constitution, which sets forth the principle of the Vietnamese Communist Party as the "guiding force" of the State and of society (para. 9). State policies are therefore those of the Communist Party, which has its own ideology with regard to religion, initially perceiving religion to be the opium of the people and therefore to be combated, and later evolving towards a special recognition of religion. In this connection, the Directive of 2 July 1998 recognizes religious belief as fulfilling a spiritual need and establishes guidelines for its control.

104. Whatever the ideology, the Special Rapporteur is of the opinion that, from the international law standpoint, the problems involved are similar to those of a State religion. If, for the sake of analysis, we take the communist ideology as the "State religion", the problem, in terms of international law, is not seen in relation to that given, but in terms of its manifestations. It is essential that that given should not be used to undermine human rights, in particular freedom of religion or belief. State policies must therefore not be used as policies for regulating religion, by defining its content, concepts or limitations, apart from those strictly necessary, i.e. those established in article 1, paragraph 3, of the 1981 Declaration and article 18 of the International Covenant on Civil and Political Rights.

105. As the Human Rights Committee stated in General Comment No. 22 of 20 July 1993 on article 18 of the Covenant, "Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner" (HRI/GEN/1/Rev.3, p. 37, para. 8).

106. With regard to the other legal texts (Decree No. 69/HDBT, Directive No. 379/TTg, Directive No. 500 HD/TGCP, Directive of 2 July 1998), some of their provisions may be regarded as progress, such as the guarantee of freedom of religion and belief and the principle of non-discrimination based on religion or belief, the guarantee of religious activities (Decree No. 69/HDBT, Directive of 2 July 1998), the return of places of worship to the churches or their owners when their use is no longer justified (Directive No. 379/TTg, Directive No. 500 HD/TGCP) and the announcement of the preparation of an order relating to religion, a project for the establishment of a printing house for the publication of religious books and works and the announcement of a project on the publication of a journal for use in religious studies, guidance and continuing education in the field of religion.

107. However, several provisions of Decree No. 69/HDBT, Directives Nos. 379/TTg and 500 HD/TGCP and the Directive of 2 July 1998, as well as Decree No. CP/312 and the Penal Code, raise serious problems of compatibility with international law to the extent that they allow the authorities to interfere and exercise direct or indirect control over religious matters, as follows:

(a) Article 21 of Decree No. 69/HDBT makes the establishment and entry into activity of religious congregations subject to an obligatory request for

permission from the authorities, at a high level of Government (Council of Ministers); this provision appears to be contrary to the principle of the religious communities' freedom to organize;

(b) Decree No. 69/HDBT, Directive No. 379/TTg and Directive No. 500 HD/TGCP give the authorities excessive direct control over the activities of religious congregations: permission from the authorities for very diverse and numerous activities (Directive No. 500 HD/TGCP and Directive No. 379/TTg), including religious retreats and meditation periods (art. 9 of Directive No. 69/HDBT), religious organizations' periodic congresses and national meetings (art. 10 of Directive No. 69/HDBT), the ordination of priests and bonzes and the appointment of religious and secular leaders (arts. 19 and 20 of Directive No. 69/HDBT, Directive No. 500 HD/TGCP and Directive No. 379/TTg), relations between Vietnamese clergy and their counterparts abroad (arts. 23 et seq. of Directive No. 69/HDBT, Directive No. 500 HD/TGCP), places of worship (placed under State auspices and opened, repaired or enlarged subject to permission from the authorities with no specification of the criteria which the request must meet: arts. 11 and 12 of Directive No. 69/HDBT, Directive No. 379/TTg) and training schools (which are also opened on the basis of permission from the Council of Ministers, although the criteria which the request must meet are not defined: art. 17 of Directive No. 69/HDBT).

(c) The above-mentioned texts also provide the authorities with indirect control over religious matters. Certain religious activities which are not subject to governmental authorization (ordinary activities within places of worship: art. 8 of Decree No. 69/HDBT) in fact must be programmed and registered every year, and this constitutes a form of monitoring and indirect permission from the authorities. The same applies to freedom to print religious books: although recognized (art. 14 of Directive No. 69/HDBT, Directive No. 379/TTg), the fact that the books are published by State printing houses (Directive No. 500 HD/TGCP) enables the authorities to exercise control and even a form of censorship (Directive No. 379/TTg explicitly indicates this). It would therefore be useful to know whether the establishment of a printing house and the publication of a journal on religious matters, as stipulated in the Directive of 2 July 1998, will be governed by the same principles or whether there will be full freedom both for the establishment of private printing houses by the religious communities and for the publication and distribution of writings on religious matters.

(d) Several provisions are vague and imprecise and therefore liable to permit interference by the authorities, by granting them excessive discretionary powers, in religious matters, including arrest, detention and imprisonment for religious activities that are in full conformity with international law. The following are the problematical provisions:

(i) Article 5 of Decree No. 69/HDBT, a vague and "catch-all" provision: "any activity using religion to sabotage national independence, oppose the State, sabotage the policy of uniting the whole people, undermine the healthy culture of our nation or prevent the faithful from carrying out their civic duties";

(ii) Directive No. 379/TTg uses vague expressions such as "exploiting religion" and "those who slander or deform the truth will be severely punished";

(iii) The Penal Code establishes severe penalties for particularly vague offences: article 73. Activities aimed at overturning the people's power: article 74. Espionage: article 81. Undermining of national unity: article 82. Propaganda against the socialist system: article 198. Disturbing the peace: article 199. Exercise of superstitious practices: article 205a. Abuse of democratic rights: article 215. Violation of the regulations governing the publication and distribution of books, newspapers and other printed matter;

(iv) These extremely vague provisions make it possible to punish manifestations of freedom of religion or belief that are in conformity with international law. Thus, Decree No. CP/31 allows administrative detention, without a court decision, of anyone who commits an offence against "national security". The Special Rapporteur endorses, in particular, the recommendations of the Working Group on Arbitrary Detention (E/CN.4/1995/31/Add.4 of 18 January 1995): "With regard to the section of the Penal Code on offences against national security, and in particular article 73, the Working Group suggests that amendments be made to define clearly the conduct to be punished, so as to indicate what is prohibited without any ambiguity" (para. 77).

(e) The Directive of 2 July 1998 explicitly makes religion an instrument of propaganda and mobilization of the people, by the Communist Party and the authorities, in favour of the policy of the State, the economic, cultural and social development effort, the mission of national defence and security and the building of a new society. Decree No. 69/HDBT prohibits any opposition to ideological education on the part of individuals and religious organizations. Religion appears as an instrument of policy rather than a component of society, free to develop as it wishes, something which is ultimately contrary to freedom of religion or belief as governed by international law.

108. While acknowledging some very limited, but noteworthy, progress in the legal sphere, the Special Rapporteur recommends that, in order to guarantee that progress fully and completely and, especially, to extend it to all manifestations of freedom of religion and belief, the problematical provisions analysed above should be revised.

109. As the Minister of Justice stated, Viet Nam is conducting the appropriate verifications to ensure conformity of domestic law with international law. He pointed out that the National Assembly was considering the preparation of an order relating to religion and said that technical assistance from the Human Rights Committee would be appreciated.

110. The Special Rapporteur therefore recommends that the following steps should be taken:

(a) Ensuring that the provisions of existing legislation and of the draft order relating to religion are in conformity with international law (1981 Declaration, International Covenant on Civil and Political Rights and Human Rights Committee General Comment No. 22);

(b) As part of the procedure for bringing domestic legislation into conformity with international law, on the one hand, relaxing or lifting the limitations placed on the exercise of the right to freedom of religion or belief, retaining only those limitations which are admissible, i.e. which do not undermine the enjoyment of the right itself, and on the other, eliminating the use of vague, imprecise and "catch-all" expressions, in order to formulate and define clearly the conduct to be punished, so that everyone is fully aware of what is prohibited.

111. The situation with regard to the Government's policy in the field of tolerance and non-discrimination based on religion or belief, and hence with regard to the religious communities, is not static. Since the policy of openness was introduced in 1990, there have generally been some positive developments, in particular the Government's recognition of the positive role of religions and the fact that it is moving away from an anti-religious policy and towards the authorization, within a framework that is well defined, limited and controlled by the authorities, of religious practice and the building of places of worship.

112. However, although this lifting of formal prohibitions may, in a way, be regarded as reflecting a gradual, but clear-cut and controlled, improvement in freedom of religion, the freedom involved is nevertheless subject to strict conditions. The freedom and, therefore, the progress in question are granted and withdrawn according to the pleasure of authorities having excessive discretionary powers and power to act (i.e. interference).

113. This situation arises both from legislation providing the authorities with unlimited powers and the policy of a Government and Communist Party anxious to use an elaborate system of control (administrative machinery for governing religious matters, triple system of control over society, and hence church members and religious organizations, through the sector policeman, the residence permit and the curriculum vitae) to prevent the emergence of any organizations capable of questioning their power and influence.

114. Also worthy of emphasis in this connection is the fact that there are seemingly different trends within the Communist Party and the Government, competition between which would explain a situation of transition or change whose meaning has not yet become fully clear. For a better understanding of the situation, awareness is needed of the impact of history, i.e. the struggle against colonialism and domination which is reflected today in an extreme sensitivity to, bordering on exaggerated fear of, everything with the potential to undermine Viet Nam's sovereignty and independence.

115. Lastly, the controlled areas of religious freedom described above are part of a general situation in which limitations, and even prohibitions, in

the religious sphere continue. It is therefore essential for these areas of freedom gradually to be extended to the entire religious sphere and, at the same time, for most of the limitations which are illegal under international law to be eliminated and only those limitations retained which are admissible according to the International Covenant on Civil and Political Rights, the 1981 Declaration and the case law of the Human Rights Committee.

116. The current situation of the religious communities, in which circumscribed areas of freedom are emerging within a general framework of controls, limitations and even prohibitions, appears to be valid for all religious dominations (considered as a whole rather than each community group specifically), Buddhist, Catholic, Cao Dai, Hoa Hao, Protestant and Muslim (the representatives of the Muslim community said that they enjoyed freedom of religion and freedom to practise their religion, but also that their association was the only Muslim association approved by the authorities for all of Viet Nam).

117. These limitations are the following:

(a) It is not possible to establish and maintain religious communities (Buddhist, Cao Dai, Hoa Hao, Muslim) freely and independently, with the exception of the Catholic Church and most of the Protestant denominations; it should nevertheless be noted that the Vietnamese Catholic Solidarity Committee and the Evangelical Church of Viet Nam in Hanoi, while seemingly marginal, appear to be counter-examples of free organizations. Furthermore, while the inherent independence of the Catholic Church of Viet Nam appears to be well established, the situation of the Protestant denominations is more fragile in that their independence is as much a result of the authorities' de facto and extralegal recognition of them, and even their clandestine nature, as their fierce opposition to official pressure seeking to control them within a single organization. In this connection, the particular situation of Protestant denominations of ethnic minorities will be discussed below (para. 119). With regard to the Buddhist, Hoa Hao, Cao Dai and Muslim communities, the standard practice seems to be to establish organizations controlled by the authorities and/or having chosen to accommodate their concerns. The question then arises of the dissident groups within these communities which have decided not to sacrifice to the authorities any of their freedom of religion or belief or forms these freedoms make take, namely, according to the Special Rapporteur's knowledge, the EBUV, the Khmer Krom Buddhist Association, the former Cao Dai Council of Priests and the former Hoa Hao Buddhist Congregation. The specific situation of these organizations, which are not recognized, and even prohibited, by the authorities, will be discussed below (para. 118).

(b) All of the religious communities are prevented from conducting their religious activities freely and are therefore subject to interference from the authorities. The programme of religious activities must be submitted to the authorities for approval.

(c) The training of the religious communities' clergy is subject to a numerus clausus and their candidatures must be approved by the authorities.

(d) The appointment of clergy and the inauguration of the highest religious dignitaries must be approved by the authorities.

(e) The movement of clergy from the different communities in order to attend religious functions, in geographical areas not usually under their jurisdiction, is subject to approval by the authorities.

(f) The building and renovation of religious communities' places of worship is subject to approval by the authorities. The restoration of places of worship confiscated after 1975 seems to be left to the goodwill of the authorities, who, Directives Nos. 379/TTg and 500 HD/TGCP notwithstanding, usually react indifferently or unfavourably to requests from the religious communities for reappropriation.

(g) The publication of religious and cultural works and religious journals is subject to State interference, to the extent that the authorities do not allow the religious communities to have their own printing houses. Control, which may take the form of censorship, is therefore exercised through the only existing printing houses, which are State-run.

(h) The religious communities are not, generally speaking, authorized to extend their religious activities into social, health or educational matters. In addition, the cultural, educational, social and hospital functions removed from the religious communities after 1975 have generally not been restored by the authorities.

118. The Unified Buddhist Church of Viet Nam (EBUV) and the unofficial Khmer Krom, Cao Dai and Hoa Hao organizations are prohibited in that the authorities restrict legal recognition to a single religious organization per denomination. These "legal" associations therefore have a monopoly of representation and management where religious matters are concerned, it being understood that their representatives must accommodate the authorities' concerns and agree to control over and interference in their religious activities. Consequently, the unofficial organizations mentioned above are not permitted to carry out any religious activities, subject to penalties by the authorities in the form of various measures (surveillance, harassment, house arrest, arrest, administrative detention, prison, re-education camp, confiscation of religious property, etc.).

119. The situation with regard to the Protestant denominations of ethnic minorities seems to be even more disturbing, as, in addition to the measures applied to the EBUV and unofficial Khmer Krom, Cao Dai and Hoa Hao organizations, there have been cases of destruction of places of worship and of ill-treatment aimed at forcing these minorities to give up their newly adopted faith. The authorities are, it seems, dropping their attitude of de facto recognition and laissez-faire and gradually prohibiting those minorities which are experiencing a large number of conversions from exercising any religious activity and hence any manifestation of freedom of religion. What is more, in their opposition to these minorities' newly adopted faith, the authorities appear to be interfering with the deepest feelings of the faithful. Such interference may definitely be regarded as a violation of freedom of religion as such.

120. The religious prisoners belonging to the different religious communities (to the Special Rapporteur's knowledge, Buddhists, Catholics, Cao Dais, Hoa Haos and Protestants) are deprived of their religious freedom in that

they are prevented from practising their religion; this is contrary to international standards, in particular the Standard Minimum Rules for the Treatment of Prisoners (rules 41 and 42).

121. The amnesties recently granted by the Vietnamese authorities to prisoners of different denominations (EBUV, Catholics, Hoa Haos, Cao Dais) are welcome developments and hold promise for positive changes. After their release, however, both congregants and clergy must be able to resume their religious activities in full freedom and full citizenship (granting of a residence permit, restoration of property, etc.). The Special Rapporteur also encourages the Vietnamese Government to extend the amnesty measures to all prisoners detained for peacefully and lawfully exercising their right to freedom of opinion, conscience, expression and religion.

122. Lastly, with regard to the situation of the religious communities as a whole, whether they enjoy lawful recognition, de facto recognition or are prohibited, the Special Rapporteur is of the view that there should be no controls which could potentially undermine the right to freedom of religion and belief and its manifestations, in particular through limitations, constraints, prohibitions and sanctions against religious leaders, individuals, organizations, places of worship and other religious property, publications and other activities.

123. The Special Rapporteur encourages Viet Nam in this direction, in particular towards a gradual and very broad extension of the progress observed and discussed in this report to Vietnamese society as a whole and, accordingly, to all religious communities and communities based on beliefs in order that Viet Nam may effectively consolidate its role in the international community.